



**DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of:)	
)	
)	ISCR Case No. 22-02460
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

08/31/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline B, foreign influence. Eligibility for access to classified information is denied.

Statement of the Case

On December 21, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline B, foreign influence. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 23, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and it was received by Applicant on April 30, 2023. He was afforded an opportunity to file objections and submit material in

refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5 (Item 1 is the SOR). Applicant did not provide a response to the FORM. There was no objection to any of the evidence and Items 2 through 5 are admitted in evidence. The case was assigned to me on July 31, 2023.

Request for Administrative Notice

In the FORM, Department Counsel requested that I take administrative notice of certain facts about the Republic of Colombia (Colombia) (Item 6 was remarked as Administrative Exhibit (AD) I). Applicant did not object, and I have taken administrative notice of the facts contained in the request that are supported by source documents from official U.S. Government publications and those that were provided with the FORM. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note are dissident groups and the National Liberation Army in Colombia commit acts of terror throughout the country, including bombings, violence against civilians, kidnappings, attacks against infrastructure, and violent attacks against the military and police facilities. The U.S. State Department advises reconsideration of travel to Colombia due to crime and terrorism. It advises there is a high threat in certain areas directed at or affecting U.S. Government interests. There are significant human rights violations, widespread government corruption, and violence against minority groups. (AD I)

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant completed a security clearance application (SCA) in March 2022 and was interviewed by a government investigator in April 2022. The following information was disclosed. He is 50 years old. He was born in Colombia. As a minor, Applicant moved to the United States in 1987 with his father, stepmother, and siblings. At some point while a minor, he moved to Venezuela with his family. His father became a citizen of Venezuela and by default he became one also. He moved back to Colombia in 1991 and completed high school in 1993. He returned to the United States in 1994 where he has resided continuously and became a naturalized citizen of the United States in 2001. (Items 4, 5)

At the time Applicant became a U.S. citizen, he held citizenships in Colombia and Venezuela. He relinquished his Venezuelan citizenship because he had no loyalty or obligation there and did not intend to return in the future. Applicant remains a dual citizen of the United States and Colombia because his Colombian citizenship allows him to travel there to visit his family without having to pay for a visa. He disclosed to the investigator that he only uses his Colombian passport to enter and exit Colombia. He also has considered living in Colombia when he retires because it has a lower cost of living. He last obtained a Colombian passport in 2016 and it expires in 2026. A review of the passport shows he used it for travel to Colombia in 2016, 2017 and 2022. (Items 4, 5)

Applicant disclosed to the government investigator that he was offered a job to work on a high-level military aircraft but it would have required him to renounce his Colombian citizenship, so he turned the job down. He does not like being forced to do things. He does not feel a conflict of interest between his loyalties to the United States and Colombia. He told the investigator that he feels more American than Colombian but he is still Colombian. He does not receive any government benefits from Colombia. He was asked by the government investigator where his loyalty would lie in a time of conflict between the United States and Colombia, and he responded that he did not know. He then said he would fight for the United States because he lives here. (Item 5)

Applicant married in 2000 and divorced in 2002. His former wife was in the United States on a student visa but overstayed when it expired. She was in the U.S. illegally at some point. He then sponsored her to become a legal permanent resident. He told the investigator that she eventually became a U.S. citizen. They share an adult child born in the United States. (Items 4, 5)

Applicant remarried in 2013. They have an eight-year-old child who was born in the United States. His wife is a citizen of Colombia. He sponsored her to enter the U.S. in 2014. Applicant told the investigator that she lives in the United States and has filed the necessary documents to become a U.S. citizen. (Items 4, 5)

Applicant's father is a dual citizen of Colombia and Venezuela and resides in Colombia. From 1997 to 1999, he was in prison in the United States for selling illegal drugs. Upon his release he was deported to Colombia. Applicant told the investigator he was not involved with any illegal activities with his father. Once his father returned to Colombia, he was again involved in selling drugs there. Applicant stopped communicating with him for a period while he was involved in selling drugs. His father can never return to the United States due to his felony conviction. His criminal activity did not involve importing illegal drugs. Applicant is unaware if anyone in his life is aware of his father's criminal past. He told the investigator that his father is unemployed, and he sends him about \$300 a month. He is 72 years old, and it is difficult for him to find work. Applicant speaks to his father daily and has regular electronic contact with him. (Items 4, 5)

Applicant's mother is a citizen of Colombia and is a former government employee. She receives retirement benefits from the Colombian government. She is a permanent resident of the United States. He said she will not become a U.S. citizen because she does not speak English. It is unknown if she travels to Colombia. He has daily contact with her. (Items 4, 5)

Applicant's stepfather is a citizen of Colombia and a permanent resident of the United States. Applicant stated that his stepfather intends on becoming a U.S. citizen. He has daily contact with him. (Items 4, 5)

Applicant has two half-sisters who are citizens of Colombia. He believes one lives in Italy, and he has no contact with her but is friends with her on Facebook. The other is a student in Colombia. He last had contact with her in December 2021. He has seven

half-brothers. Five live in the United States, and he believes three are dual citizens of the United States and Colombia. He does not know the others' immigration status. He has infrequent contact with them. He has two half-brothers who are citizens and residents of Colombia. He has contact with them on holidays and birthdays. His last contact with them was 2021. (Item 5)

Applicant has two uncles, two aunts, and four cousins who are citizens and residents of Colombia. He maintains regular contact with them all, varying between about three to four times a week, once a month, once every three to four months, or a couple of times a year. (Item 5)

Applicant's mother-in-law and father-in-law are citizens and residents of Colombia. He has weekly telephone and electronic contact with them. His father-in-law is employed but Applicant does not know the exact job he holds. His mother-in-law is a housewife. It is unknown how much contact his wife has with her parents. (Items 4, 5)

Applicant's brother-in-law and two sisters-in-law are citizens and residents of Colombia. Her brother-in-law works for the National Police. His sisters-in-law work in the private sector. Applicant's wife has daily contact with her brother-in-law and one sister-in-law and weekly contact with the other sister-in-law. (Item 5)

Applicant and his wife own a home in Colombia with an approximate value of \$40,000. He and his wife purchased it in 2016 for about \$20,000. They owe about \$10,000 on the mortgage. His cousin rents the house from them. When his cousin moves, he intends to sell the house. His wife has a bank account in Colombia that is used to manage the finances related to the house. His uncle has a power of attorney related to the house. He also uses this account to provide his father financial support. He told the government investigator that if the house was seized it would not cause financial hardship. He did not provide any other information about his current assets or finances. (Item 4, 5)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline B: Foreign Influence

AG ¶ 6 expresses the security concern regarding foreign influence:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they resulted in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is it associated with a risk of terrorism.

AG ¶ 7 describes conditions that could raise a security concern and may be disqualifying. I have considered all of them and the following are potentially applicable:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion;
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information;
- (c) shared living quarters with a person or person, regardless of citizenship status, if that relationship creates a heightened risk of foreign inducement, manipulation, pressure, or coercion; and
- (f) substantial business, financial, or property interests in a foreign country, or in any foreign owned or foreign-operated business that could subject the individual to a heightened risk of foreign influence or exploitation or personal conflict of interest.

AG ¶ 7(a) requires evidence of a "heightened risk." The "heightened risk" required to raise this disqualifying condition is a relatively low standard. "Heightened risk" denotes a risk greater than the normal risk inherent in having a family member living under a foreign government or owning property in a foreign country. The totality of Applicant's family ties to a foreign country as well as each individual family tie must be considered.

The mere possession of a close personal relationship with a person who is a citizen and resident of a foreign country is not, as a matter of law, disqualifying under Guideline B. However, depending on the facts and circumstances, this factor alone is sufficient to create the potential for foreign influence and could potentially result in the compromise of classified information.

The United States Department of State warns U.S. citizens to reconsider travel to Colombia because of threats of terrorism and crime and to exercise increased caution due to civil unrest and other violent attacks by dissident groups. It advises there is a high threat in certain areas directed at or affecting U.S. Government interests. There are significant human rights violations, widespread government corruption, and violence against minority groups.

Applicant's father, father-in-law, mother-in-law, half-sisters, half-brothers, uncles, aunts, and cousins are citizens and residents of Colombia. He provides his father monthly financial support. He visits his family in Colombia and maintains daily contact with many of them and regular contact with others. His wife also maintains daily and regular contact

with some of her family living in Colombia. Information was not provided as to her contact with her parents. He owns a house in Colombia where his cousin resides that his uncle manages. He also has a bank account there to take care of financial transactions. Applicant's family residing in Colombia and foreign property create a heightened risk and a potential foreign influence concern. AG ¶¶ 7(a), 7(b), 7(c) and 7(f) apply.

After the Government produced substantial evidence of the disqualifying conditions, the burden shifted to Applicant to rebut them or otherwise prove mitigation.

I have analyzed the facts and considered all of the mitigating conditions under AG ¶ 8 and conclude the following are potentially applicable:

(a) the nature of the relationship with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization and interests of the U.S.;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interests in favor of the U.S. interests;

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation; and

(f) the value or routine nature of the foreign business, financial, or property interests is such that they are unlikely to result in a conflict of interest and could not be used effectively to influence, manipulate, or pressure the individual.

Applicant's family, which includes his father, mother-in-law, father-in-law, half-sisters, half-brothers, uncles, aunts, and cousins are citizens and residents of Colombia. He has daily contact with some of them and weekly contact with others. He visits them in Colombia. He provides financial support to his father. Applicant's contact with his family is not casual and infrequent. AG ¶ 8(c) does not apply.

I have considered Applicant's close relationship with his family in Colombia. It is an unsafe place for people residing there, and especially for U.S. citizens. Terrorism and human rights abuses are significant. Terrorist groups conduct kidnappings, bombings, and other attacks on innocent people. His brother-in-law works for the national police and his mother receives a pension from the Colombian government. I cannot find that it is unlikely that Applicant would be placed in a position of having to choose between his

relatives and his wife's relatives and the interests of the United States. AG ¶ 8(a) does not apply.

Applicant has been a U.S. citizen since 2001. I have considered that his children are citizens of the United States. Applicant's wife is a permanent resident. Applicant did not provide any information about his overall finances to better understand whether his financial interests in Colombia might have a significant impact on him. Although, he indicated he is more American than Colombian, I was unable to make a credibility determination regarding his family interests and loyalties in Colombia. Applicant's close relationship with his family in Colombia, his visits, his daily contact with several family members, his wife's daily contacts, and his financial support and financial interest are considerable. It is too great of a burden to expect him to be loyal to the interests of the United States and resolve any conflicts in favor of the United States over those of his relatives. Applicant failed to provide any information other than his basic responses in the SCA and to the investigator to mitigate the security concerns raised under this guideline. AG ¶ 8(b) and 8(f) do not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline B in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor or to question him about his foreign contacts and foreign financial interests. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

The heightened risks raised by familial ties and financial interests in Colombia continue to raise security concerns under Guideline B, foreign influence and are unmitigated. Applicant has failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline B:	AGAINST APPLICANT
Subparagraphs 1.a-1.h:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge